

*International Journal on Responsibility 2.1 Dec 2018*

## **Responsibility in Building the Rule of Law: Kosovo Challenges**

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### **Abstract**

*The principle of the rule of law is one of the most important and essential principles for any state and for democratic society. Its fullest realization in everyday life is the best guarantee for the development of democracy and the recognition and enforcement of citizens' fundamental rights and freedoms. To this end, the general principles of the rule of law today occupy a special place and are fixed explicitly in contemporary constitutions and democratic legislation. The well-known countries of Western democracies have long established a rich and valuable legacy in this regard.*

*When exploring the contours and details about establishing the rule of law in the Republic of Kosovo, we must bear in mind that Kosovo has gone through a sad and bloody history until its declaration as a state in 2008. Kosovo independence on 17 February 2008, and its international recognition, poses the immediate need to build a rule of law and democratic state with European values. The Kosovo Constitution reifies concrete efforts and steps to sanction the general principles of the rule of law, which are the core of democracy. This fact is best illustrated in the preamble and constitutional provisions where “the independence of the state and the entirety of its territory, the freedoms and human rights, the rights of communities and their members, social justice, constitutional order, pluralism, religious coexistence, as well as the citizenship state element instead of the national one, are the basis of this state, which has the duty to respect and protect them.” In building the rule of law, the Republic of Kosovo has been exploring the experience of other democratic countries, and in particular, the European Union member states. This article aims to introduce the rule of law in the context of Kosovo by identifying the achievements, responsibilities and challenges that the Republic of Kosovo faces in this regard. Through the breakdown of the definition of the rule of law in the context of the existing constitutional-legal system of the Republic of Kosovo, it turns out that the Republic of Kosovo, despite satisfactory achievements, should be engaged more and more strongly in building a functioning, democratic and legal system by addressing also the remaining economic and social challenges as well as additional legislative challenges in term of quality of law.*

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**Key words:** *rule of law, principles of rule of law, constitution, constitutionality.*

## **1. Introduction**

The concept of the rule of law is quite complex and multidimensional. It includes in itself the set of legal-political principles that ensure the rule of law in society. Michal Pietrzak recognized the following principles as pillars of the rule of law: constitutionalism, nation sovereignty, separation of powers, independence of judges, self-government of local authorities, constitutional nature of the guarantees of citizens' rights and freedoms, the responsibility of authorities for any action and in particular for violation of the law (Kruk, 2006, p. 75). The rule of law implies the superiority of the law over citizens and the state itself, as its authors.

The term and concept of the “rule of law” was compiled by German law theorists Laband and Jelinek (Gozzi, 2007, p.247). Albert Dicey had a great deal of influence on the definition of the term “rule of law,” where according to him, the term included at least three concepts: 1) supremacy of the law; 2) equality of all persons before the law; and 3) the principles of creating and protecting the rights of individuals (Dicey, 1885 & Loughlin, 2018). But the concept of the rule of law, with the development of the state itself, has later evolved and gained wider content. In legal and political theory, the terms “the rule of law principle,” “state of law” and recently “rule of law” are all used (Krygier, 2015). In the broad sense, the rule of law means the establishment of all the bodies of power, as well as anyone bearing public authorizations and of every individual under the constitution and law, respectively subordination to the legal order (Hughes, 2015). In contemporary jurisprudence, the term “rule of law” in the most general sense, means the state in which the functioning and manifestation of state power has legal forms, which define the boundaries of the action of the state power (Kurteshi, 2015., p.105). The principle of rule of law in contemporary democratic countries is of multiple importance. It gives the understanding of the system in which state power, in particular the executive and administrative power, is limited to its own legal norms (constitution and law), in which way the non-violation of fundamental human and citizen freedoms and rights is guaranteed. The purpose of the rule of law consists in affirming and ensuring human legal security, the equality of all before the law, and the effective protection of all their freedoms and rights through independent and impartial courts (Hughes, 2015).

What is evident is that many concepts of the rule of law place particular emphasis on legal security, predictability and resolution on determining the norms held in society, and on the dependable character of their administration by the state (Jeremy, 2008). According to Kruk (2006, p. 75), the rule of law implies building a foundation for the future constitution and the political system. When it comes to constitutionalism in the context of Kosovo, as it will be elaborated below in this paper, we can freely say that it is inspired by the doctrine and

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practice of democratic states, especially from the German concept of the rule of law “Rechtsstaat”, due to the fact that the Constitution of the Republic of Kosovo has been completely drafted in cooperation with representatives of Western countries present in the country.

The purpose of the paper is to analyse the content of the rule of law definition in the context of Kosovo by analysing the provisions of the Constitution of the Republic of Kosovo and analysing very broadly the practical application of the “rule of law”. This analysis provides a general presentation of how much this principle is incorporated in the Kosovo legal order, how much it reflects on its constitution, and how much this principle is being implemented in Kosovo. It turns out that this principle is theoretically well incorporated into the text of the Constitution of the Republic of Kosovo and its implementation in practice has been implemented in some respects but there are still challenges that follow its implementation.

## **2. Methodology**

To validate the hypothesis raised in this paper and to answer the research questions, the methods used are qualitative and descriptive. Such methods enabled the use of various scientific and professional sources, including university textbooks, papers and scientific articles, analysis of constitutional and legislative acts, and in particular the constitutional system of the Republic of Kosovo.

## **3. Rule of Law or Rule of Law in the Context of Kosovo**

### *3.1. Historical aspect of the autonomy of Kosovo*

In order to understand problems of Kosovo regarding the implementation of the rule of law principle, one must first clarify some historical circumstances and try to analyse the inclusion of this principle in the legislation of the Republic of Kosovo and its observance at least throughout the last ten years after the declaration of independence.

Political history is only one side of the history of the Albanian people (Hadri, 199., p.60). Kosovo, for centuries, represented an autonomous political, legal and territorial collectivity that was distinguished by a majority ethnic Albanian population. Throughout history, Kosovo has been an autonomous territorial entity (Rrahimi, 1969, p.12). During the Ottoman Empire, Albania had four vilayets (provinces) where Vilayet of Kosovo was one of them stretching over a surface of 32,900 km<sup>2</sup> (Pirraku, 2000., p.135). Thus, Kosovo, as a separate administrative-legal unit, was constituted by Turkish regulation of 1868, within the Ottoman Empire (Rrahimi, 1969, p.12). Kosovo exercised this legal-administrative status until the beginning of the Balkan Wars 1912-1913. Albanians (of Kosovo) expected the beginning of the First Balkan War as the

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ultimate opportunity to get liberated and gain independence from the Ottoman Empire. However, as a result of the Balkan wars, Kosovo was occupied by Serbia, namely the Serbo-Croatian-Slovenian Kingdom. During the Second World War the autonomy of Kosovo was emphasized by the fact that Albanians were treated as a nation, and Kosovo ended the war as a nation and as a unit organized in military and legal terms (Bujan Conference Resolution, 1944). The constitutional-juridical position of Kosovo in the period of the former Yugoslavia is defined as an autonomous political-territorial unit and constitutive element of federalism (SFRY Constitution, 1974). According to the Kosovo Constitution of 1974, Kosovo was defined as an autonomous political-territorial unit and as a constitutive element of Yugoslav federalism. According to the Constitution, Kosovo had its own territorial boundaries, which had the capacity of state borders (the Constitution of the SAP of Kosovo of 1974; Youth for Human Rights, 2017).

The Balkan Revolutions launched in 1989 aimed at overthrowing the half-century communist practice (Castellan, 1991, p.496) as a Cold War legacy. Western Europeans did not clearly perceive the Balkan conflict and at this point they joined the Balkan protagonists, who in turn did not define Europe well (Rupnik, 2004., p. 17). The Yugoslav Federation disintegration started the destruction of the constitutional concept of the position of Kosovo in 1990, with secession and international recognition of federal units as well as the beginning of the bloody war on the territory of former Yugoslavia, characterized by the disintegration of the Yugoslav state and the creation of new sovereign and independent states.

The period 1990-1999 for Kosovo is known as the period of classical occupation of Kosovo by Serbia. The war of the Albanian people of Kosovo expressed through the KLA strongly proved the determination for freedom and independence of Kosovo. And, precisely on 24 March 1999, NATO started air strikes over Serbia, which lasted 78 days and ended with the capitulation of Serbia and the freedom of Kosovo (Campbell, 2000., pp. 159-181). The UN Security Council, on 10 June 1999, adopted Resolution 1244, with which it formally placed Kosovo under United Nations administration (Resolution 1244, 1999). This international administration was of an interim character and aimed at creating decent democratic conditions for resolution of the final status of Kosovo (Resolution 1244, 1999). On 17 February 2008, the Kosovo Assembly declared Kosovo an independent state (Declaration of Independence of Kosovo, 2008) and on 9 April 2008, solemnly approved the Constitution. The 2008 Constitution, which should be evaluated in full compliance with European democratic standards, opened the road of building a democratic society and a rule of law in the Republic of Kosovo. For this purpose, the following section will analyse the inclusion of the rule of law or the rule of law principle into the provisions of the 2008 Constitution of Kosovo.

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### *3.2. Constitution of the Republic of Kosovo*

The content of the rule of law definition is decisive for the content of a constitution as a road for building the rule of law in a country. This section of the paper will present the content of the rule of law principle in the context of Kosovo based on the content of the Constitution of the Republic of Kosovo. From a straightforward point of view of the text of the Constitution of the Republic of Kosovo, it is clear that this constitution complies with the demands of contemporary science of constitutional law, despite the special remarks that may be made to any of its formulations.

Exploring the experience of other parliamentary countries also applies to a key problem, such as the relationship between different powers, from which the form of governance is defined, in our case the republic type. The parliamentary character of the Republic of Kosovo is explicitly provided in Article 1, as well as in Article 4 of the Constitution, but rather than the formal definition of the type of republic, it is important to have a clear and fair definition of the division of powers, their relationship, and the competencies that these powers have. From this rapport that the Constitution sets out, the parliamentary character of the Republic of Kosovo is also unequivocal, as the Government and the Parliament are bound by a trust relationship, while the President is a constitutional body separated from the Government. According to the Constitution of Kosovo *“The President is the head of state and represents the unity of the people of the Republic of Kosovo”* (Constitution of the Republic of Kosovo, Article 83). The constitution has democratically solved the issue of the independence of the judiciary power. According to Article 4 of the Constitution *“Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.”* Judicial power is unique, independent, fair and impartial and provides equal access to the courts. Guaranteeing fundamental human rights and freedoms with constitutional norms are a special guarantee for building the rule of law in the Republic of Kosovo. In the Constitution, fundamental human rights and freedoms are defined in Chapter II, which deals with the general principles of these human rights and freedoms. A separate chapter, namely Chapter III, is devoted to the rights of communities and their members. According to the Constitution, residents belonging to a national or ethnic, linguistic or religious group, traditionally present in the Republic of Kosovo, will have special rights as set forth in the Constitution. The establishment and functioning of the Constitutional Court is an important and positive factor in building a sustainable and functional democracy, and in particular towards building the rule of law in the Republic of Kosovo. The Constitutional Court as a guarantee for the consolidation of the democratic state and rule of law, is a mechanism for the protection of the Constitution and constitutionality and being a constitutional category, it *“guarantees respect for the Constitution and makes its final interpretation”* (Constitution of the Republic of Kosovo, Article 113).

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*3.3. Rule of law*

The concepts of French jurist and renowned political scientist Maurice Duverger remind us that in a democracy, legal norms must first have a special structure and content that define the rule of law (Duverger, 1986, p. 421). According to the same author, the rule of law is determined by a structure that opposes the “absolutist” state, which some also call “a despotic state.” The rule of law is considered as the means by which the system of democratic values penetrates into legal mechanisms. If it ceases to be a state of human rights, it becomes a state of injustice, despite the presence of the hierarchy of norms and related procedures, because such a state contradicts the system of values that created it (Burdeau, 1963, p. 328).

The principle of the rule of law in contemporary democratic countries is of multiple importances. It means the system in which state power, in particular the executive and administrative power, is limited to its own legal norms, in which way it guarantees the non-violation of the fundamental human rights and freedoms (Kurteshi, 2004., p.106). Americans obey the law, not only because it is their own work, but because it may be changed if harmful. Tocqueville considers that law is respected because it is a self-imposed evil in the first place, and an evil of transient duration in the second (Tocqueville, 2002, p. 88). The principle of the rule of law is undoubtedly one of the most important and essential principles for any state and democratic society (Zaganjori, 2002, p.70). Its full realization in everyday life is the best guarantee for the development of democracy and the recognition and enforcement of citizens' fundamental human rights and freedoms (Robaj, 2007, p.70). For this, the general principles of the rule of law nowadays take a special place and are explicitly fixed in contemporary democratic constitutions and legislation. The general principles of the rule of law are these:

- a) free and democratic elections;
- b) exercise of power by majority;
- c) respect for the opposition;
- d) constitutionalism;
- e) guarantee of human rights and fundamental freedoms;
- f) independence of the judiciary;
- g) and, separation and mutual control of powers, etc.

(Omari, 2002, p.51).

For the implementation of all these principles that are reflected in the text of the Constitution of the Republic of Kosovo and the implementation of the entire content of the Constitution, the Constitutional Court of the Republic of Kosovo is meant to give a great contribution. However, the following section will attempt to

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clarify in very broad context how much this Court and other institutions in the Republic of Kosovo have achieved to contribute in this regard and in particular to the building of the rule of law.

*3.3. Efforts to build the rule of law*

When talking about establishing the rule of law in the Republic of Kosovo, we must bear in mind that Kosovo, like the other countries of the former SFRY, emerged from a regime in which the notion of rule of law was denied, and that Kosovo for nine years (1990-1999) was under the classical occupation of Serbia, where this form of Serbian regime was considered a police and despotic state.

Placing Kosovo under UN international administration (UN Resolution 1244) was aimed at building the first democratic institutions and preparing Kosovo for its political and legal status. Building the rule of law in Kosovo is an essential element of the democratic transition that Kosovo started after its placement under international administration (Bajrami, 2005, p.53). As elaborated above, the Constitution of the Republic of Kosovo has fully incorporated the principles and characteristics of the rule of law. This is in fact well seen in the preamble and constitutional provisions. Constitutionality is a key element of the rule of law. The supremacy of the constitution over all other normative acts is a postulate of the rule of law (Saliu, 2004, p.137). To guarantee the supremacy of the constitution, an important tool is the existence of constitutional justice, which makes it possible to realize the requirement for the state to be subject to the highest norms. As stated above, the mechanism for protection of constitution and constitutionality is the Constitutional Court, which is a constitutional category. This is illustrated by the fact that “*the Constitutional Court guarantees respect for the Constitution and makes its final interpretation*” (Constitution, Article 113, par. 1). Kosovo during the 10-year period (2008-2018) as an independent state has made institutional efforts for the purpose of building and establishing the general principles of the rule of law. Thus, it has organized and held several parliamentary and local elections that have been evaluated by the OSCE as democratic; the transfer of power from the outgoing government to the winning government has been repeatedly done peacefully; constitutionality has been expressed through the decisions of the Constitutional Court, which in most cases have increased hope for the functioning of the rule of law; human rights and fundamental freedoms have also been dealt with by the Ombudsperson and local and international NGOs for the protection of these rights, which has influenced their affirmation; the judiciary as an independent constitutional power, even though criticized by the EU and other international mechanisms for political and corrupt interference, has yielded some tangible results that add optimism for the future of an independent and functional judiciary; the gradual integration of the Serb minority in the Kosovo institutions, etc. (European Commission, 2016; 2018, p.3).

Governance and the rule of law, on the one hand, and sovereignty and territorial integrity, on the other hand, were the priorities of the Western countries

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in 2008 which aimed to maintain public order in Kosovo in order to solve the causes of its fragility, strengthen stability in the Balkans and protect the internal security of the EU (Capussela, 2015, p.158). The EU and its member states also had the interest and means to substantially improve governance in Kosovo. Enlargement and security policies of the EU come across in the Balkans. In varying degrees, the region presents three of the five risks identified by the European security strategy: regional conflicts, state failure and organized crime (Capussela, 2015, p. 173), Schmitt (2012, p.281). It is considered that ethnic homogenization so far is being accompanied by the unification of political thought (Schmitt, 2012, p.281). However, in Kosovo, strenuous, long-lasting effort has been extended in building a true rule of law. In 2002, a UN report said that out of 200 world countries, only 82 can be called fully democratic. These states include 57% of the world population (Kval-Mellbye-Tranoy, 2006, p.17; Human Development Report 2002, pp.2,10). Considering these statistics, it can be said that Kosovo has also made considerable progress in building the rule of law in view of its short history. However, the full implementation of the rule of law principle or the building of a sustainable state of law requires continuous efforts from Kosovo institutions in order to address remaining challenges, most of which are identified in the following section of the present paper.

#### ***4. Challenges in building the rule of law in Kosovo***

Counting all the remaining challenges in building fully the rule of law in Kosovo is impossible because of space considerations. They can be perceived, classified or distinguished in different ways. This section of the paper identifies only the main challenges that present better the complexity of building the rule of law. As elaborated above, the 2008 Constitution of Kosovo has realized its political mission as it has established a good foundation for building the state and state institutions, has demonstrated its functionality, and has established the foundations of the rule of law. However, despite the constitutional and social achievements, the constitutional system and order has been stalling and facing many constitutional challenges. First, even after a decade, the Constitution has failed to extend to the entire territory of Kosovo, especially in the north of the country, where there have been blockades and obstructions by Serbia through the Serbian community. Second, one of the challenges of this Constitution is the full integration of the Serb minority in the institutional and social life of Kosovo. This is also due to the misuse of constitutional rights of the Serb community, especially the abuse of double voting, which has been an element in blocking decision-making for the establishment of some constitutional institutions such as the Kosovo Army (Express, 2018, Klan Kosova, 2018). Third, the fight against organized crime and corruption is a challenge in itself for the state of Kosovo, which has often been blamed for lack of efficiency (European Commission, 2018, pp.3-4). Fourth, the most important challenges are: the termination of political



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influence in public enterprises and state agencies; termination of political influence in public information media, and in particular on national television; termination of political influence, and making fundamental reforms in the justice system; termination of political influence in employment, especially in the state administration; termination of political influence in procurement, etc. (European Commission, 2016). When discussing these challenges, the factors that influence mostly the establishment of the rule of law both positively and negatively are historical factors discussed above, economic and social factors, and the quality of legislation. These factors that are strengthening or weakening of the rule of law will be analysed in much broader context.

*4.1. Economic development as an important factor for the rule of law*

As in the case of other countries, also in the case of the Republic of Kosovo, we should mention the economy of the country as an important factor in building the rule of law and we cannot ignore the positive or negative impact of economic transformation in public life. Measuring the impact of this factor through the application of the rule of law principle is difficult, but all property alienation processes, including the privatization of public property (not minor, but in a bad condition), have been made through decision-making considered by civil society as decisions taken under the risk of corruption, public property misuse, and other negative phenomena (Mustafa, et al., 2008). As estimated by Kruk (2006, p. 14) for privatization in Poland, this way of economic transformation can effect the destruction of society, enrichment and impoverishment, material inequality and inequality of opportunities, and unemployment. Limited public finances in Kosovo with an annual budget of over 2 billion euros (Law on Budget of the Republic of Kosovo, 2018), in spite of these phenomena, certainly cause great social dissatisfaction expressing the social demands of citizens. Therefore, a process of inefficient privatization, not implemented in compliance with applicable law as the rule of law requires, certainly has not only negative effects on the economy of the country but also on the rule of law. Unfortunately, economic development is lacking, and unemployment is quite high in Kosovo.

*4.2. Society in transformation and the rule of law*

Lack of development or weak civil society is another factor that has an impact on and constrains the rule of law. Although civil society is not strong enough and cannot convince citizens that they can have a major impact on the conduct of public policies (European Commission, 2018, p.9), it is important for full functioning of the rule of law. Low turnout of Kosovo citizens in the polls (Central Election Commission, 2018), a very limited number of social initiatives and a very weak sense of belonging and common interest still characterize Kosovo society. Such actions often have a greater impact in this regard because the joint action of civil society mobilizes society to a large extent. Such

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mobilization has the power to create counter arguments opposing those put forth by those in power. Indeed, civil society organisations well organised at the national level concentrate more or less solely on political developments, while grassroots civil society organisations are missing in many areas of Kosovo and are very weak in those areas where they do exist in big cities of Kosovo.

*4.3. Quality of Kosovo legislation*

Another factor that has an impact on building the rule of law in Kosovo is the quality of Kosovo legislation in force. As in other countries, the quality of Kosovo legislation is not related to the exercise of power by one or another political faction, but it constitutes one of the conditions of the rule of law (Kruk, 2006, p.86). As stated by the Science of Laws Institute (2018), the purpose of democratic governments is to ensure the human rights and freedoms of citizens within the rule of law; and to achieve this goal, they should create high standard quality laws that promote democracy and solve social problems with minimum burden on citizens. High-quality laws have the following characteristics and should be:

1. sustainable and serve the interests of democracy;
2. simply formulated, concise and comprehensible;
3. accessible, adopted without procedural violations;
4. There should be no retrospective action, be published in advance, provide legal certainty, comply with the entire legal system while respecting human rights and not causing adverse side effects to citizens' interests

(Science of laws Institute, 2018; Kruk, 2006, p. 86).

If the legislation of a country does not have these characteristics or does not meet these requirements, citizens' human rights and freedoms are considered to be weak, while economic and social development ostensibly stagnate. In these cases, independent constitutional institutions act to preserve the law by eliminating the legal process causing the erroneous law, deriving from legislation that lacks the abovementioned characteristics. The effect of such legislation is extremely damaging because it loses the trust of citizens who are living in the rule of law (Kruk, 2006, p.87). Legislation in harmony with the abovementioned features would be the ideal law. How well states have been able to draft such quality legislation is an issue that continues to challenge even countries that are members of the Organization for Economic Co-operation and Development (OECD) and have been making efforts for years to improve their legislative practices, but which again result in dissatisfaction (OECD, 1994, p. 7). Similar efforts have been made by the Republic of Kosovo for twenty years following the end of the war and for ten years as an independent state. Of course, this short period of

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independence and efforts to put in place the rule of law, have affected the building of the rule of law by bringing some good results but also challenges that will follow the country for a long while in terms of quality legislation.

Kosovo, administered for years by the United Nations Mission in Kosovo (UNMIK), has managed to eliminate the discriminatory laws adopted and implemented by institutions of the former Yugoslavia, by issuing new regulations through UNMIK authorities together with the Kosovo Provisional Institutions of Self-Government (UNMIK, 2018) at that time, as well as through the institutions of the Republic of Kosovo since 2008, following the declaration of independence. All legislative acts are drafted with the help of international experts and on the basis of international practices of democratic countries. Since 2002, Kosovo has voluntarily drafted its legislation in line with the European Union legislation. Kosovo continues today to enact laws in line with EU legislation based on the Stabilization and Association Agreement already signed with the European Union, which entered into force in 2016 (SAA between the EU and Kosovo, 2015). In spite of the discretion that the Republic of Kosovo has to set deadlines and ensure the approximation of its legislation to that of the European Union (apart from the areas required by the SAA), numerous legal acts are in full harmony with European Union legislation, e.g. legislation in the field of the environment (Ministry of Environment and Spatial Planning, 2016). Countries apply full harmonization or a “copy and paste” method of adopting legal provisions from EU legislation when they are very close to joining the EU. This way of harmonization is not always positive since it turns into un-implementable legislation because of financial cost because it requires the establishment of certain institutional mechanisms or due to cultural and traditional ideals and practices. These and other reasons result in failure to implement that legislation and imposes frequent amendments and changes. In this way, the sustainability of legislation is questioned. However, Kosovo has succeeded in drafting legislation that serves considerably the interests of democracy, especially legislation pertaining to civil and political rights, in particular the rights of minorities, considered to be the most advanced legislation in the region and beyond (RTV Dukagjini, 2018, Zymberi, 2017, Klan Kosova, 2018).

Regarding the characteristic of being simply formulated, succinct and understandable, Kosovo institutions with the assistance of international experts have managed to establish the legal basis for the standards of drafting legislative acts through the Administrative Instruction (Administrative Instruction on Standards of drafting of normative acts, 2013; Kajtazi, B., 2016). Currently, the Government of the Republic of Kosovo has issued for that purpose also the Better Regulation Strategy 2014-2020 (Kosovo Government, 2014). Based on the guiding documents of the Kosovo Government, the drafting of Kosovo legislation should be in accordance with the principle of the prohibition of the retrospective power of legal provisions (Kajtazi, B., 2016, p.645). Moreover, for the very few cases that have been brought before the Constitutional Court for non-compliance with legal procedures while issuing legal acts, the court decided that the

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procedures were not violated, e.g. Government Decision on Raising Salaries in 2018 (Kosovo Law Institute, 2018).

The requirement for legal acts to be published in advance in order to provide legal certainty, is a requirement that is fully respected by the Government of the Republic of Kosovo, the Assembly of the Republic of Kosovo, and the Constitutional Court as they publish on their web sites official legal acts, including draft legal acts (OPM Documents, 2018, Laws of the Assembly, 2018, Decisions of CCK). Regarding line ministries, municipal assemblies and regulatory authorities, it is worth pointing out that there have been improvements in this direction and the trend is positive (State Portal of the Republic of Kosovo, 2018). Of particular importance is the Law on Access to Public Documents that enables all citizens of the Republic of Kosovo to seek access to any official document that is relevant to their rights and to be informed about decisions of public interest (Law on Access to Public Documents, 2010).

The Constitution of the Republic of Kosovo in its Article 3 provides that public authorities should exercise their power based on the principle of equality before the law and fully respecting human rights and freedoms as guaranteed by international legal acts (2008). Article 21 of the Kosovo Constitution provides that fundamental human rights and freedoms are the basis of the legal order in the Republic of Kosovo, while Article 22 guarantees the direct implementation of international conventions on fundamental human rights and freedoms in the Republic of Kosovo (2008).

Furthermore, the Republic of Kosovo has also established an institutional mechanism that will handle implementation and respect of human rights legislation, including the establishment of the Ombudsperson institution, and human rights offices in line ministries and municipalities (Draft Strategy and Action Plan for the Protection of Human Rights in the Republic of Kosovo, 2013). Therefore, the Constitution of the Republic of Kosovo, followed by many other laws, including the Law on Protection against Discrimination (2015), and the institutional mechanism for human rights as well as other (judicial) mechanisms, create the possibility for Kosovo legislation to be compatible with the entire legal system in order to respect human rights and not cause adverse side effects to citizens' interests. For certain laws that require a harmonization among them due to incompatibilities between them, which incompatibility is caused due to the involvement of many international experts coming from different legal schools (Kuçi, H., 2011), the Office of the Prime Minister of the Republic of Kosovo did establish a separate Commission to eliminate these incompatibilities (Anon).

## **5. Conclusion**

The building and functioning of the rule of law in the Republic of Kosovo is of special importance and is a significant positive factor in the difficult process of

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breaking away from the past and having the orientation toward building a democratic and multi-ethnic society. Although the Republic of Kosovo is the youngest state in Europe and has emerged from a bloody and devastating war, it has managed to consolidate and build genuine democratic institutions during the transition and state-creation period, building the image and the confidence of a relatively modern state with European values.

However, it should be borne in mind that the existence of a constitutional and legal framework is just a prerequisite for the rule of law. Equally important is the functioning of various controlling mechanisms for the implementation of constitutional and legal norms, and in particular the creation of a new mentality both in public officials and in citizens which is expressed in a conscious attitude to the needs of implementation of these norms, and in a reaction, by legal and democratic means, to their violation by anyone.

The Republic of Kosovo needs to continue its efforts in further building a fully functioning, sustainable and democratic state. The Republic of Kosovo, in its efforts to build the rule of law, continues to face many remaining challenges, such as: full integration of the Serb minority in the institutional and social life of Kosovo; full exercise of state sovereignty; the fight against organized crime and corruption; termination of political influence in public enterprises and state agencies; termination of political influence in the media, with particular emphasis on public television; termination of political influence in the justice system, employment, procurement and etc. In addition, the quality of applicable laws in Kosovo continues to be endangered by the negative effects of incompatibilities between them. Indeed, these challenges are also an obstacle to economic development and advancement of Kosovo towards European Union doors.

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